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ICC Staff
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DIRECT TESTIMONY

of

DAVID A. BORDEN

Energy Division

Illinois Commerce Commission

Petition for Order Granting Qualified Solid Waste Energy Facility Status.

A&N Energy Systems, Inc.

Docket No. 03-0681

January 21, 2004

1 **Q. Please state your name and business address.**

2 A. My name is David A. Borden. My business address is 527 East Capitol Avenue,
3 Springfield, Illinois, 62701.

4

5 **Witness Qualifications and Education Background**

6 **Q. Please briefly state your qualifications and education background.**

7 A. In 1986, I graduated from the University of Texas at Austin with a Bachelor of
8 Arts degree in Economics. In 1989, I graduated from Texas A&M University,
9 College Station, Texas with a Master of Science degree in Economics. I have
10 been employed by the Illinois Commerce Commission ("ICC" or the
11 "Commission") since June, 1990.

12

13 I began work for the Commission as an Economic Analyst II in the Rate Design
14 Department of the Public Utilities Division. In December 1992, I was hired as an
15 Economic Analyst III by the Water and Sewer Program of the Office of Policy
16 and Planning. In September 1996, I transferred to the Energy Program of the
17 Office of Policy and Planning as an Economic Analyst III. In January 1998, I was
18 hired as an Executive Assistant to Commissioner Richard Kolhauser. I provided
19 policy and technical analysis for Commissioner Kolhauser on all energy,
20 water/wastewater and transportation matters before the Commission.

21

In January 2000, I was hired as an Economic Analyst IV by the Energy Division.
I have previously testified on behalf of Staff in numerous dockets concerning
energy and water/wastewater issues.

Purpose of Testimony

Q. What is the purpose of your direct testimony?

A. The purpose of my testimony is to review the testimony and exhibits filed by the
Petitioner, A&N Energy Systems, Inc., and to make a recommendation to the
Commission. Based upon my review, I recommend that the Commission
approve the Petitioner as a Qualified Solid Waster Energy Facility ("QSWEF").

Basis For Recommendation

**Q. Mr. Borden, are you aware that Section 8-403.1(b) of the Act defines a
"QSWEF" as a facility determined by the Commission to qualify as such
under the Local Solid Waste Disposal Act, that uses methane gas
generated from landfills as its primary fuel and possesses characteristics
which would enable it to qualify as a cogeneration or small power
production facility under PURPA.**

A. Yes.

Q. Mr. Borden, have you reviewed material that confirms that A&N Energy

44 **facility meets the definition of a QSWEF under the Local Solid Waste**
45 **Disposal Act?**
46

47 A. Yes. The Local Solid Waste Disposal Act defines a QSWEF as "either (i) a solid
48 waste pollution control facility or a portion thereof owned and operated by or for
49 the benefit of a unit of local government . . . or (ii) a facility which uses methane
50 generated from landfills." As set forth in the testimony of A&N Energy, their
51 facility will use methane generated from the McLean County landfill to generate
52 electricity.
53

54 Furthermore, A&N Energy agrees with Staff that A&N Energy will not use any
55 fossil fuel, e.g., natural gas, at the QSWEF without first receiving Commission
56 approval. Thus, I conclude that the primary fuel for A&N Energy is landfill
57 methane and that the facility meets the definition of a QSWEF under the local
58 solid waste disposal Act.
59

60 **Q. Mr Borden, has A&N Energy provided evidence that it possesses**
61 **characteristics which would enable it to qualify as a cogeneration or small**
62 **power production facility under PURPA?**
63

64 A. Yes. But first and foremost, the ICC has independent authority to determine
65 whether a petitioner meets this criteria, and typically the ICC has been satisfied
66 by a petitioner's Form 556 that is filed with the Federal Energy Regulatory

Commission or "FERC". The FERC Form 556 enables a petitioner to self-certify its Qualifying Facility status with FERC as a small power production facility under PURPA. A&N Energy has provided a copy of its FERC Form 556.

Q. Mr. Borden, regarding ownership requirements, are you aware that Section 8-403.1(e) of the Act provides that: "The Illinois Commerce Commission shall not require an electric utility to purchase electricity from any QSWEF which is owned or operated by an entity that is primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more QSWEFs."

A. Yes.

Q. Does A&N Energy comply with the ownership requirements?

A. Yes. From information that I reviewed, and from discussions with A&N Energy, it appears that A&N Energy is owned by two individuals. Furthermore, as indicated in discussions with A&N Energy, they are not owned or operated by an entity that is primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy from a source other than one or more QSWEFs, i.e., this appears to be the only electric generating facility owned by A&N Energy.

Q. Mr. Borden, will A&N Energy establish a reimbursement fund to repay the

90 State of Illinois for tax credits issued pursuant to Section 8.403.1(d) of the
91 Act, and will A&N Energy follow investment guidelines for the
92 reimbursement fund, and for true-ups to the reimbursement fund, if
93 necessary?

94
95 A. Yes. A&N Energy has agreed to establish a reimbursement fund for the sole
96 purpose of repaying the State for tax credits issued pursuant to Section 8-
97 403.1(d).

98
99 A&N Energy must begin repayment of the tax credit amounts no later than 10
100 years from the date that they first sell power to the utility. I have reviewed
101 spreadsheets that set forth the repayment plan contemplated for this time period.
102 Based upon my review, I believe that A&N Energy has established an
103 appropriate plan.

104
105 Staff requires that A&N Energy invest funds in the following allocations: 50% in
106 bonds with an average Standard & Poors, Moody's or Fitch rating of AA, and
107 50% in a diversified portfolio of common or preferred stock and mutual funds
108 listed in the S&P 500 , with an overall weighted return in the 7-7.5% range.

109 Under these requirements, the Company must invest the present value of the
110 amount owed the State ten years from now.

111
112 Given that actual market conditions may vary from expected conditions, the

113 reimbursement fund may require a true-up, on no less than an annual basis, to
114 ensure that sufficient funds exist to repay the State in full when the amounts
115 become due. Staff requires, and A&N Energy agrees to file annual reports with
116 the Commission that set forth the net present value of the reimbursement
117 obligation so that the Commission can determine whether the Petitioner is in
118 compliance with the Commission's Order regarding reimbursement and whether
119 it is necessary for the Commission to Order A&N Energy to take additional
120 actions regarding the reimbursement fund. The annual report regarding
121 reimbursement shall be filed with Manager of the Commission's Financial
122 Analysis Division, or its successor, no later than March 31st of each year. The
123 report shall set forth the status of the reimbursement fund, and include, at a
124 minimum, a description of each investment vehicle, their credit ratings, if any; the
125 historical equity returns for 10, 3, and 1 year periods for equity investments, to
126 the extent available; and the dollar amount balance in each investment vehicle.
127 The report shall include the target dollar amounts for each investment vehicle
128 and shall determine whether the existing funds are sufficient for reimbursement.
129 All financial assumptions used in connection with the report shall be included in
130 the report and explained in the accompanying rationale.

131
132 **Q. Has A&N Energy agreed to provide a security agreement to ensure that the**
133 **State is repaid the amounts owed, pursuant to Section 8-403.1(d), even in**
134 **the event of a financial default or bankruptcy filing on behalf of A&N**
135 **Energy?**

136

137 A. Yes. A&N Energy agrees to enter into a security agreement that will protect the
138 balance of the reimbursement fund in the event of the financial default and/or
139 bankruptcy of A&N^N Energy. It is my understanding, from reviewing the agreement,
140 that the State (the Illinois Commerce Commission) is the only entity that can
141 authorize the withdrawal¹ of the funds.

142

143 Q. Does this conclude your testimony?

144 A. Yes.

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